



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2095**

**Appeal MA-060098-1**

**Town of Kapuskasing**



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## **NATURE OF THE APPEAL:**

The requester (now the appellant) submitted a request to the Town of Kapuskasing (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information related to the Town's snow removal operations. The request specifically stated:

I request information related to snow removal of winter 2004-2005 on willow, cournoyer st, de l'etang st. I request all records from the 1<sup>st</sup> of January to the 30<sup>th</sup> of March on those streets. All details and foreman signatures have to be on the reports...

The Town located responsive records and denied access to them in full in accordance with section 12 of the *Act*, solicitor-client privilege. In doing so, the Town advised that the information may be utilized in litigation.

The appellant appealed that decision to the Commissioner's office.

During the mediation stage of the appeal process, the Town agreed to reconsider its decision and issued a new decision providing partial access to the records it located. The appellant did not have an issue with the severances made by the Town, but he did question whether the Town provided him with the complete records related to the Town's snow removal operations on the basis of his experience working for the Town and the need for certain types of forms to be completed for audit purposes and maintenance logs.

The appellant advised that he wished to appeal on the basis that the Town did not conduct a reasonable search for responsive records pursuant to section 17 of the *Act*. Mediation did not resolve this issue, and this file was transferred to the inquiry stage of the process, with reasonable search as the sole issue.

I sought representations from the Town, initially. The representations and affidavit received by the Town were shared in their entirety with the appellant, who was asked to provide representations in response. The appellant did not submit representations.

## **DISCUSSION:**

### **SEARCH FOR RESPONSIVE RECORDS**

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist. As I noted above, the appellant did not submit representations. However, during the course of this appeal, the appellant identified that he believes that the records exist because he has some experience working for the Town and states that he has seen other types of forms to be completed by Town workers, such as maintenance logs that show hours worked, fuel costs, etc. and he believes that these types of documents would be required to be kept by the Town for audit purposes as the Town would have to be able to show how and when fuel was used.

During mediation, this information provided by the appellant was discussed with the Town's Freedom of Information Co-ordinator, who brought the Director of Public Works (the Director) into the discussions. At that time, the Director explained that there are different forms and detailed reports that are produced by the Town for other types of activities but apparently they are not kept for "blow back". The Director explained that although they keep records of financial audits, they do not do so for operational audits. He also advised that there were no blow backs done in the month of March. This response did not satisfy the appellant and the Town was therefore asked to provide a written summary of all steps taken in response to the request.

Representations were received from the Town's Clerk, who was also the Freedom of information Co-ordinator. She indicated in her representations that it was not necessary to contact the appellant regarding his request because it was very clear, in that he was seeking records of the dates blow back operations occurred on his street, specifically from January through March, explaining that he thought this may have occurred in March and believed that damage to his vehicle occurred as a result of the blow back operations.

The Clerk indicated that in undertaking a search for responsive records for this request, she discussed the request with the Director and asked specifically if records were maintained by the Public Works Department, and what other relevant records might exist. She stated that the Director then undertook a search for records the Public Works Department maintains and advised that no records specifically for blow back operations exist in that department. The Clerk stated that in conducting this search the Director spoke with the Public Works Department Purchasing Agent and the Public Works Department Foreman. She indicated further that the search incorporated all records kept by the department, including time record sheets and sanding logs. She added that while the town maintains sanding records, the Director advised that the sanding operations do not incorporate blow back operation records. She concluded by indicating that the Director is not aware of any such records existing.

The Clerk attached to her representations an affidavit sworn by the Director, in which he affirms that he searched the Public Works Department for records associated with winter snow blow back operations as well as any other records which might exist with respect to such operations and that he spoke with the Public Works Department Purchasing Agent and Foreman, who both confirmed that no such records exist.

As noted above, the Town is not required to prove with absolute certainty that additional records do not exist. Rather, it must satisfy me that its searches for records were reasonable. Although the appellant believes, based on his experience working for the Town from time to time, that records should exist, I am satisfied based on the submissions made by the Town that the Town has taken all reasonable steps to locate records in the area in which records would reasonably be expected to be located and that the search was conducted by staff who would likely know or be in a position to determine whether such records do or would likely exist. The appellant's view of the Town's practices is not sufficient to persuade me otherwise. I am therefore satisfied that the Town's search for responsive records was reasonable in the circumstances.

**ORDER:**

I dismiss the appeal.

Original Signed By: \_\_\_\_\_

October 5, 2006

Laurel Cropley  
Adjudicator